The Faculty Council on Research met Wednesday, March 14, 2001, at 9:00 a.m. in 36 Gerberding. Chair Mark Bothwell presided.

PRESENT: Professors Bothwell, Gordon, Heath, Reh, Stewart Ex-Officio Camber, Jewell, Zuiches Regular Guests Mac Parks, Office of Research; Kerry Kahl,

ABSENT: Professors Bosch, Ewart (excused), Mirza, Vance (excused) Ex-Officio Dupuy, Ghosh, Kwiram (excused), Ludwig, Perrin (excused), Sheehan, Sjåvik, Williams

The Minutes from February 14, 2001 were approved without change.

Continued Discussion of Proposed UW Copyright Policy Changes

Bothwell reminded the Council of the recent history of discussion on the proposed copyright policy changes. On January 17, 2001, FCR had a fairly lengthy discussion about the proposed changes and voted unanimously to approve them (see minutes, http://www.washington.edu/faculty/facsenate/councils/fcr/FCR-minutes/011701mins.htm). The Faculty Council on Faculty Affairs (FCFA) also reviewed the changes and decided that some of the proposed changes warranted further consideration and suggested that a joint subcommittee of FCFA and FCR be formed to address some of their concerns. The subcommittee met, discussed the changes, decided that the policy was not a reiteration of existing policy but rather a change in policy that could be perceived as detrimental to the faculty, and drafted a resolution opposing the changes, suggesting that they be redrafted with more faculty input.

At the last meeting of the FCFA (March 8, 2001), the members who were present voted to amend the resolution. (Note: all of the FCFA members subsequently voted by email to unanimously approve of the changes to the resolution.) FCR considered the resolution, its changes, and reconsidered the proposed changes to the copyright policy at this meeting.

As he had in previous meetings, Parks continued to assert that the proposed changes are simply a clarification of the existing policy and are intended to increase awareness among the faculty for their own protection about the rules. Parks specifically wished to bring certain points about the whole issue of copyright policy to the Council's attention. First, he reminded everyone, that the University's copyright policy is one of exception, referring to the first sentence of the policy: "University faculty…retain all rights…except when….” Second, he emphasized that there is a strict State ethics code, within which the University must operate on this issue. In addition to State law, Parks pointed out thirdly that the University must comply with U.S. copyright policy, including the federal definition of 'work made for hire' (the main sticking point of the policy among faculty). Parks made the distinction between one being an employee and one being an employee who is asked to perform particular activities that count as works for hire. He told the Council that federal law is ambiguous on this point and that cases to date do not resolve the issue of whether scholarly publications and such are considered as specific works for hire. Furthermore, he told the Council that a strong case could be made on behalf of faculty that their general scholarly activities including publishing papers are not works for hire. The case would depend on the definition of 'scope of employment' (how much the hiring party can dictate the exact activities of its employees). Parks highlighted the fact that exact activities of faculty are very rarely, if ever, dictated by Chairs or Deans, and therefore would not count as works for hire (i.e. no one tells faculty which papers to write or when). He claimed that the policy changes were intended to simply make these issues less ambiguous and that the definitions would not affect the majority of faculty.

Jewell implied that it is the organization of the changes that muddle their intent, leading to possible misinterpretation, and suggested to Parks some ways that the information could be reorganized to appear less alarming. (Note: the changes were not originally drafted by Parks, but rather by the Office of Intellectual Property and Technology Transfer.) Parks took the suggestions constructively and replied that he would certainly consider making the adjustments. Bothwell reiterated his original opinion on the changes, that the difficulty for the faculty was a 'perceived' threat not so much as an actual one, and that the intent of the subcommittee was to provide the means for a dialogue so that, with more information, the changes seemed less threatening.

Bothwell pointed out that the State Ethics Law provides a Frequently Asked Questions (FAQ's) section to address specific cases and suggested that the University supply such a list. Parks said that Prof. Lea Vaughn (Secretary of the Faculty) had already made the suggestion of compiling a list of FAQ's, and that he had agreed to do that. Reh suggested that if the...
changes are truly a reiteration of the existing policy and an attempt to clarify the policy to the faculty, then they are unnecessary, and all that may be needed is this list of FAQ's or some such informational document. Parks told the Council that the 'fall back position' of the administration would be to withdraw the changes, as suggested by the joint subcommittee, and just issue informational documents. However, Parks believes that this really would not solve the problem (faculty and administrators still would not have any guidance on how to deal with these issues if problems arose). He claimed that people ultimately look to the policy as the 'final word'; if the policy is not clearly defined, FAQ's will not make any difference.

Reh noted that the proposed draft contains specific examples of what types of work the University would own, and suggested that the specific examples (like the mention of rights pertaining to development of software code) are not only unnecessary but may alienate faculty who do not participate in those activities. Parks replied that he sees his point, but there is disagreement among people who have read the draft as to whether the examples help or hinder the cause of clarification. Parks also asked why specific examples are mentioned defining works for hire, when the Federal law is ultimately unclear on this definition and open to interpretation? Parks answered that the example of software code falls under a more definable category of contractual agreement, and that this example was chosen rather deliberately because it was a case of dispute over software code ownership rights that originally prompted the administration to redraft the copyright policy.

Reh asked whether the faculty have to approve of the changes proposed by the administration? Reh remarked that the proposed changes make concrete definitions of terms not previously defined, removing ambiguities on which a faculty member might make her/his case; therefore, the faculty would oppose the changes if they were subject to faculty approval. If Parks wants the changes to be made with minimal disagreement from the faculty, Reh said, then there must be an education campaign of some sort to clarify how exactly defining the terms is in their best interest. Parks affirmed the need for education, stating however that it would be addressed later in the process of policy change.

Gordon interjected that she does not have a problem with the language of the changes or with the definition of works for hire. She felt that the policy clarifies her rights and that the changes are in her best interest.

The members were unsure as to what to do next: to vote on the resolution as written by the joint subcommittee, to vote on the resolution as amended by FCFA, or to vote on the policy changes. Sensing that some clarification was needed, Parks explained the process of policy change within the University. Typically changes will be drafted by an advisory committee (in this case, the Intellectual Property Management Advisory Committee). The draft is then sent to the various Councils of the Faculty Senate, the Board of Deans, the Research Advisor Board, and the Faculty Senate Office. After that, an effort is made to integrate all suggestions of the various councils and boards into a final draft of the policy, which is then sent to the President to sign. S/He then re-circulates the final draft back to the Board of Deans, Research Advisor Board and to the Senate Executive Committee, who have 60 days (typically) to comment and/or vote. Finally, if all groups approve, the President signs the policy changes as an Executive Order. In the current case, Parks added, expressing frustration, 'we are back at stage one.' He told the Council that they had the right to simply ask to consider the changes further and were not compelled to vote one way or the other.

Bothwell asked for a motion to approve of the resolution as amended by FCFA. The members further discussed the issue and came to the conclusion that the language of the amended resolution was too harsh. Because they felt that the proposed copyright policy changes were not significantly different from the original version of the policy, they did not feel that they constituted a 'serious threat to academic freedom' (as described in the amended resolution). They voted unanimously to oppose the resolution as amended by FCFA. They proposed to let Parks consider the suggestions made by Jewell, Reh, and others, and draft a revision of the proposed policy changes. Parks reiterated his desire to work collaboratively with faculty on this issue.

Online Library

Bothwell introduced a topic that FCR might wish to consider in their next meeting. There is a nationwide, grassroots movement currently supported by over 6,000 people in the health sciences to boycott journals that do not subscribe to a policy of making in their journals available free, online at PubMed Central (a web-based archive) six months after initial publication. The boycott takes the form of refusing to review and/or submit manuscripts to journals that do not subscribe to this policy. The Council agreed to discuss this issue at the next meeting and how it might affect UW faculty (should they join the movement?). They hoped to discuss the issue with input from representatives of the University's libraries and perhaps from groups like the Federation of American Societies for Experimental Biologists (FASEB).

Meeting adjourned at 10:32 a.m. Minutes by Katherine Wimble, Recorder.